IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

FRIDAY, THE 16TH NOVEMBER 2007 / 25TH KARTHIKA 1929

OP.No. 31957 of 2000(D)

PETITIONER:

K.M.PATHUMMA,
KAPPINGAL HOUSE,
VATTAMANAPURAM – 676 601.
ALANALLUR, PALAKKAD DISTRICT.

BY ADV. SRI.K.C.BALAGANGADHARAN
SRI.S.SOMAN
SMT.USHA RAVINDRAN

RESPONDENTS:
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1. STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO TAXES,
THIRUVANANTHAPURAM - 695 001.

2. COMMISSIONER OF AG. INCOME TAX,
THIRUVANANTHAPURAM – 695 001.

3. AGRICULTURAL INCOME TAX OFFICER,
MANNARKKAD – 678 582.

BY ADV. SHRI.PRADEEP, GOVERNMENT PLEADER

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 16/11/2007, THE COURT ON 16/11/2007 DELIVERED THE FOLLOWING:

OP NO. 31957/2000

ORDER ON CMP NO. 54417/2000 IN OP NO. 31957/2000

DISMISSSED.

13/11/2007 SD/- (C.N.RAMACHANDRAN NAIR, JUDGE)

APPENDIX

PETITIONER'S EXHIBITS

P1 : COPY OF THE REPLY DATED 10/10/91 OF THE PETITIONER TO THE 3RD RESPONDENT.

P2 : COPY OF THE REPLY DATED 03/11/1995 OF THE PETITIONER TO 3RD RESPONDENT.

P3 : COPY OF PETITION DATED 29/09/2000 SENT TO 2ND & 3RD RESPONDENTS.

P4 : COPY OF HTEREPLY DATED 24/10/2000 TO THE PRE-ASSESSMENT NOTICE to the 3RD RESPONDENT.

P5 : COPY OF the ASSESSEMNT ORDER DATED 28/10/2000 PASSED BY 3RD RESPONDENT.

P6 : COPY OF THE NOTICE NO. P.21/91-92 DATED 30/10/2000 PROPOSING TO IMPOSE PENALTY BY 3RD RESPONDENT.

P7 : COPY OF THE REPLY DATED 08/11/2000 TO EXT.P6 NOTICE.

// TRUE COPY //

PA TO JUDGE.

jg

C.N.RAMACHANDRAN NAIR, J.

O.P. No. 31957 of 2000

Dated, this the 16th day of November, 2007

J U D G M E N T

I heard learned counsel for the petitioner and learned Government Pleader.

2. Petitioner is challenging Ext.P5 assessment order issued under the Agricultural Income Tax Act for the assessment year 1991-92. Petitioner's claim is for total exemption of agricultural income tax on the ground that petitioner is holding less than three hectors of land. Even though the extent of holding claimed by the petitioner is correct, the amendment providing for exemption of land up to 3 hectors was effected in the AIT Act by Finance Act 1992 and therefore, petitioner's claim for exemption for the year 1991-92 is not tenable. However, I find from Ext.P5 assessment that AIT assessed from total holding of around 5 acres is Rs.26,664/-. Learned Government Pleader has furnished statement containing details of payment of AIT by the petitioner for the six years prior to the impugned assessment. In all these years, the income assessed together with surcharge is less than Rs.10,000/-. Demand for the immediate preceding year i.e. 1990-91 was only Rs.7,881/- and the demand for the year 1989-90 was Rs.9,530/-.

Since the original petition was entertained and stay was granted by this Court, petitioner was prevented from availing statutory remedy by way of appeal. In the circumstances, and having regard to the amount of tax paid by the petitioner for the preceding years and total exemption available to the petitioner from the next assessment year onwards, I feel petitioner can be granted quantum relief. In the circumstances, this original petition is partly allowed modifying Ext.P5 by reducing the demand of tax together with surcharge to Rs.10,000/-. Petitioner is given one month time from the date of receipt of a copy of this judgment to remit the above amount without any interest. If payment is made as above, respondents will treat the demand as closed. In view of the above findings and directions, there is no scope for penalty against the petitioner and therefore the penalty order issued against the petitioner is cancelled.

(C.N.RAMACHANDRAN NAIR, JUDGE.)

jg